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LA CANADA VENTURES, INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

LA CANADA VENTURES, INC.,

Plaintiff,

vs.

MDALGORITHMS, INC.,

Defendant.

Case No.: 3:22-cv-07197-RS

**SECOND AMENDED  
COMPLAINT**

Judge: Hon. Richard Seeborg

Pursuant to the order granting the parties' August 18, 2023 Stipulation Re Second Amended Complaint (Dkt. 30), Plaintiff La Canada Ventures, Inc. ("La Canada"), by and through its counsel of record below, hereby submits its Second Amended Complaint against Defendant MDalgorithms, Inc. ("MDalgorithms") and hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for infringement of La Canada's registered trademarks

1 and unfair competition under federal and state law, a declaration and order that  
2 trademark registrations wrongfully issued to MDalgorithms be cancelled, and a  
3 declaration that La Canada has committed no tortious acts against MDalgorithms.

#### 4 **THE PARTIES**

5 2. La Canada is a California corporation having a principal place of business  
6 at 448 N. San Mateo Drive, San Mateo, California 94401.

7 3. Upon information and belief, MDalgorithms is a Delaware corporation  
8 with headquarters at 22 Shlomzion Hamalka Street, Herzlya, Israel 4662 and a regular  
9 and established place of business in San Francisco, California.

#### 10 **JURISDICTION AND VENUE**

11 4. The Court has original jurisdiction over this action pursuant to 15 U.S.C.  
12 § 1131 and 28 U.S.C. §§ 1331 and 1338, supplemental jurisdiction over the state law  
13 claims pursuant to 28 U.S.C. § 1367, and original jurisdiction over the declaratory  
14 judgment claims pursuant to 28 U.S.C. § 2201, *et seq.*

15 5. This Court has personal jurisdiction over MDalgorithms because it  
16 regularly conducts business in this district, the causes of action arise out of business  
17 conducted in this district and, upon information and belief, has a regular and established  
18 place of business in this district.

19 6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391  
20 because MDalgorithms is a corporation that is subject to personal jurisdiction in this  
21 district and because a substantial portion of the acts giving rise to the causes of action  
22 asserted herein arose from acts and occurrences within this district.

#### 23 **LA CANADA AND ITS MARKS**

24 7. La Canada offers high quality health and beauty products and has done so  
25 since at least as early as 2006. La Canada offers its products through retail outlets and  
26 online through its website and through third party platforms, such as Amazon. La  
27 Canada's products are sold throughout the United States and also internationally.

1           8.     La Canada offers its products under its established MD brand which  
2 consists of a family of marks consisting of the standalone term “MD” (the “MD Mark”)  
3 and composite marks based on the root MD in combination with other terms (the “MD  
4 Formative Marks”).

5           9.     The MD Mark is registered to La Canada with the U.S. Patent and  
6 Trademark Office (“USPTO”) as U.S. Reg. 4,471,494 for “cosmetics; hair shampoos  
7 and conditioners; non-medicated acne treatment preparations; non-medicated  
8 toiletries” in Class 3 and “acne treatment preparations; nutraceuticals for the treatment  
9 of hair loss; nutraceuticals for use as a dietary supplement” in Class 5 based on a first  
10 use of at least as early as January 1, 2012. As a result of its long-term use, the MD  
11 Mark has achieved incontestable status pursuant to 15 U.S.C. § 1065.

12           10.    Multiple MD Formative Marks are also registered to La Canada with the  
13 U.S. Patent and Trademark Office, including: MD 101, U.S. Reg. 3,459,245; MD  
14 LASH FACTOR, U.S. Reg. 3,432,209; MD INTIMATE RESTORE, U.S. Reg.  
15 4,603,019; MD BY SUSAN F. LIN M.D., U.S. Reg. 5,860,508; MD INTIMATE  
16 FRESH, U.S. Reg. 6,027,099; MD WELLNESS BY SUSAN LIN M.D., U.S. Reg.  
17 6,251,811; and MD FACTOR, U.S. Reg. 6,309,386. The MD Formative Marks have  
18 been used since at least as early as August 1, 2007 and, like the registered MD Mark,  
19 two MD Formative Marks have achieved incontestable status.

20           11.    La Canada has also adopted and used other MD Formative Marks that  
21 consist of the MD Mark combined with another term or terms pertaining to the  
22 particular application of the product, including MD® Skin, MD® Nutri Hair and MD®  
23 Wellness. La Canada has offered its products in commerce using these additional MD  
24 Formative Marks since at least as early as 2006 (MD® Skin), 2009 (MD® Nutri Hair)  
25 and 2018 (MD® Wellness), respectively.

26           12.    As a result of this long term and continuous use, MD has come to be  
27 associated with La Canada in the minds of consumers as a source of high quality health  
28

1 and beauty products.

2 13. La Canada has developed substantial and valuable good will in its MD  
3 and MD Formative Marks.

4 **MDALGORITHMS AND ITS INFRINGING ACTIVITY**

5 14. Approximately three and a half years after La Canada began using an MD  
6 Formative Mark, MDalgorithms began offering a treatment system that purportedly  
7 includes computer software and app technology to diagnose and prescribe a treatment  
8 for MDalgorithms' clients.

9 15. Consistent with that use, MDalgorithms registered "MDAcne" with the  
10 USPTO as U.S. Reg. 4,946,004 for "computer software and downloadable computer  
11 software for education and advice in the field of the care and treatment of skin  
12 disorders, namely, acne" in Class 9, and "providing a website featuring information  
13 and advice in the field of the diagnosis and treatment of acne" in Class 41. The  
14 "MDAcne" application was filed more than 8½ years after La Canada adopted and  
15 began using its MD Formative Marks and claims a date of first use of May 16, 2010,  
16 at least 3-4 years after La Canada adopted and began using its MD Formative Marks.

17 16. MDalgorithms also registered as U.S. Reg. 5,519,511 "MDacne" for  
18 "medicated skin treatment and cleansing creams" in Class 5 based on first use  
19 beginning December 1, 2017, almost 6 years after La Canada adopted and began using  
20 its MD Mark. Consistent with its other registrations at that point, the specimen that  
21 MDalgorithms submitted to obtain registration showed that MDalgorithms was  
22 offering a product that was purportedly customized for each individual client.

23 17. Similarly, MDalgorithms registered "MDHair" as U.S. Reg. 6,617,014 for  
24 "providing temporary use of on-line non-downloadable computer software for  
25 education and advice in the field of the care and treatment of skin and hair" in Class 42  
26 based on a claimed first use of September 13, 2010, which was after La Canada adopted  
27 and began using MD® Nutri Hair. The USPTO found "MDHair" to be descriptive and  
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1 only allowed registration on the Supplemental Register.

2 18. MDalgorithms then filed an intent-to-use application to register  
3 “MDSkin” for “downloadable mobile software for use in analyzing a users skin and  
4 preparing a personalized treatment plan” in Class 9. In its June 24, 2021 response dated  
5 to the USPTO’s refusal of the application, MDalgorithms cited La Canada’s registered  
6 MD Mark.

7 19. According to MDalgorithms, the consuming public has come to recognize  
8 MDalgorithms as a source of the computerized analysis system offered under the  
9 “MDacne” and “MDHair” marks.

10 20. Recently, MDalgorithms has expanded beyond the software-based  
11 systems for which it claims it has consumer recognition. MDalgorithms registered the  
12 mark “MDacne,” which it originally registered and used in connection with its  
13 computer-based diagnosis products, for “non-medicated skincare preparations” in  
14 Class 3. MDalgorithms first used the mark in connection with health and beauty  
15 products on November 21, 2021 with full knowledge of La Canada’s existing use (as  
16 shown, *e.g.*, by its knowledge of La Canada’s MD Mark registration) and, as shown in  
17 the MD Mark registration, almost 11 years after La Canada first used its mark for  
18 similar goods. The specimen submitted by MDalgorithms contains no indication that  
19 the product is in any way customized for individual customers.

20 21. MDalgorithms’ purported marks incorporate La Canada’s registered MD  
21 Mark in its entirety. Moreover, MDalgorithms’ purported marks use the same structure  
22 as La Canada’ MD Formative Marks, namely, the term “MD” followed by another  
23 word or phrase.

24 22. MDalgorithms has admitted that “MD” is commonly understood to mean  
25 “Doctor of Medicine.” A basic function of a Doctor of Medicine is to diagnose and  
26 suggest a treatment. “MD” as used in the context of MDalgorithms customized  
27 products based on an individualized analysis and treatment is therefore merely  
28

1 descriptive.

2 23. MDalgorithms combines the descriptive MD component with another  
3 term that describes the condition to be treated, *e.g.*, acne or hair, in a manner that  
4 renders the mark as a whole descriptive when used in the context of health and beauty  
5 products. Because La Canada was first to use its MD Formative Marks,  
6 MDalgorithms' descriptive marks could not have acquired secondary meaning prior to  
7 La Canada's adoption and use of its marks.

8 24. The MDalgorithms' marks are similar in sight, sound and commercial  
9 connotation to La Canada's MD Formative Marks and are being offered in connection  
10 with products that directly compete with those offered by La Canada.

11 25. Shortly after MDalgorithms began using its MD-based marks for products  
12 that directly compete with those offered by La Canada, La Canada began receiving  
13 complaints about products, *e.g.*, "MD Hair," offered by MDalgorithms.

14 26. MDalgorithms' actions have therefore created actual consumer confusion  
15 which, unless enjoined, is likely to continue and which will harm La Canada, including  
16 diverting sales and eroding the valuable goodwill La Canada has developed in its MD  
17 brand.

18 **MDALGORITHMS' WILLFUL DISREGARD OF ACTUAL CONFUSION**

19 27. Promptly after receiving the initial indications of actual confusion from  
20 MDalgorithms' customers, La Canada sent a letter to MDalgorithms in which the actual  
21 confusion was brought to MDalgorithms' attention and in which La Canada requested  
22 that MDalgorithms cease its infringing activity. MDalgorithms responded to La  
23 Canada's letter but refused to cease use of the infringing marks.

24 28. La Canada continued to experience actual confusion. It therefore reported  
25 the infringement to Amazon.com and Apple pursuant to their respective policies  
26 because MDalgorithms was selling infringing products through Amazon and its app  
27 distributed through the Apple App Store.

29. In a subsequent letter, MDalgorithms responded with assertions that La Canada's reporting of the confusion caused by MDalgorithms' marks was false because MDalgorithms' product purportedly incorporates a treatment system, while La Canada offers ordinary retail cosmetics.

30. The MDalgorithms' products, however, were also being sold as ordinary retail cosmetics without indication of an associated "treatment system." MDalgorithms nevertheless asserted that La Canada's actions were unlawful.

31. MDalgorithms then listed a series of demands for which it demanded compliance within days after the letter was received and stated that unless La Canada acquiesced to the demands, despite the actual confusion, MDalgorithms would sue La Canada for various tortious acts, including defamation, false light, tortious interference, and unfair business practices, and seek monetary and injunctive relief.

### **COUNT I – FEDERAL TRADEMARK INFRINGEMENT**

32. La Canada hereby restates and incorporates the factual allegations in Paragraphs 1-31 above as if set forth fully herein.

33. La Canada is the owner of the mark MD and multiple MD Formative Marks which it has used in commerce continuously since at least as early as 2006.

34. La Canada's marks are the subject of multiple federal registrations, including U.S. Reg. 4,471,494, U.S. Reg. 3,459,245, U.S. Reg. 3,432,209, U.S. Reg. 4,603,019, U.S. Reg. 5,860,508, U.S. Reg. 6,027,099, U.S. Reg. 6,251,811, and U.S. Reg. 6,309,386. The La Canada registrations are valid and subsisting.

35. At least four of La Canada's federal registrations, including U.S. Reg. 4,471,494, are incontestable pursuant to 15 U.S.C. § 1065, which is conclusive evidence under 15 U.S.C. § 1115 of the validity of La Canada's marks covered by the incontestable registrations, including the MD Mark, La Canada's ownership of the marks, and La Canada's exclusive rights to use the registered marks for the goods and services that are the subject of the registrations.



1           36. La Canada has priority over MDalgorithms to use MD as the sole or  
2 substantial portion of a mark for health and beauty products.

3           37. La Canada has developed substantial goodwill and consumer recognition  
4 in its MD brand, including the MD Mark and the MD Formative Marks, based on its  
5 long-term and continuous use over almost 16 years.

6           38. MDalgorithms has adopted and is using MD marks, including “MD Acne”  
7 and “MD Hair” in commerce regarding the sale of health and beauty products in direct  
8 competition with La Canada. MDalgorithms’ marks are confusingly similar to those  
9 of La Canada in sight, sound and commercial connotation.

10          39. MDalgorithms offers, sells and distributes health and beauty products  
11 under the infringing MD marks to the same or substantially similar class of consumers  
12 through the same or substantially similar channels of trade as La Canada.

13          40. MDalgorithms’ adoption and use of MD marks has caused actual  
14 confusion and, unless enjoined, is likely to cause continued confusion among  
15 customers and potential customers as to the source and quality of goods offered by La  
16 Canada.

17          41. MDalgorithms’ actions therefore constitute infringement of La Canada’s  
18 rights in its registered MD Mark and/or MD Formative Marks pursuant to 15 U.S.C.  
19 §§ 1114, 1125(a).

20          42. MDalgorithms’ actions have eroded and threaten to further erode the  
21 substantial goodwill La Canada has developed in its MD brand.

22          43. La Canada has therefore been harmed by MDalgorithms’ use of its  
23 infringing marks and, unless such use is enjoined, will continue to be harmed.

24          44. MDalgorithms’ actions have been willful and in disregard of La Canada’s  
25 rights of which MDalgorithms is and was aware.

26          45. La Canada is therefore entitled to an award of damages as well as fees and  
27 costs to the fullest extent allowed under the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and  
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1 entry of an order enjoining further infringing acts by MDalgorithms.

2 **COUNT II – UNFAIR COMPETITION**

3 46. La Canada hereby restates and incorporates the factual allegations in  
4 Paragraphs 1-45 above as if set forth fully herein.

5 47. La Canada is the owner of the mark MD and multiple MD Formative  
6 Marks which it has used in commerce continuously since at least as early as 2006.

7 48. La Canada has priority over MDalgorithms to use MD as the sole or  
8 substantial portion of a mark for health and beauty products.

9 49. La Canada has developed substantial goodwill and consumer recognition  
10 in its MD brand, including the MD Mark and the MD Formative Marks, based on its  
11 long-term and continuous use over almost 16 years.

12 50. MDalgorithms has adopted and is using MD marks, including “MD Acne”  
13 and “MD Hair” to advertise and sell to consumers health and beauty products in direct  
14 competition with La Canada. MDalgorithms’ marks are confusingly similar to those  
15 of La Canada in sight, sound and commercial connotation.

16 51. MDalgorithms offers, sells and distributes health and beauty products  
17 under the infringing MD marks to the same or substantially similar class of consumers  
18 through the same or substantially similar channels of trade as La Canada.

19 52. MDalgorithms’ adoption and use of MD marks has caused actual  
20 confusion and, unless enjoined, is likely to cause continued confusion among  
21 customers and potential customers as to the source and quality of goods offered by La  
22 Canada.

23 53. MDalgorithms’ actions therefore constitute unfair and deceptive business  
24 practices prohibited by California Business & Professions Code § 17200 and at  
25 common law.

26 54. MDalgorithms’ actions have eroded and threaten to further erode the  
27 substantial goodwill La Canada has developed in its MD brand.

1           55. La Canada has therefore been harmed by MDalgorithms' use of its  
2           infringing marks and, unless such use is enjoined, will continue to be harmed.

3           56. MDalgorithms' actions have been willful and in disregard of La Canada's  
4           rights of which MDalgorithms is and was aware.

5           57. La Canada is therefore entitled to restitutionary relief and entry of an order  
6           enjoining further acts of infringement or other unfair competition by MDalgorithms as  
7           well as any other relief available under California law.

8                           **COUNT III – CANCELLATION OF REGISTRATION**

9           58. La Canada hereby restates and incorporates the factual allegations in  
10          Paragraphs 1-57 above as if set forth fully herein.

11          59. La Canada is the owner of the mark MD and multiple MD Formative  
12          Marks which it has used in commerce continuously since at least as early as 2006.

13          60. La Canada's marks are the subject of multiple federal registrations,  
14          including U.S. Reg. 4,471,494, U.S. Reg. 3,459,245, U.S. Reg. 3,432,209, U.S. Reg.  
15          4,603,019, U.S. Reg. 5,860,508, U.S. Reg. 6,027,099, U.S. Reg. 6,251,811, and U.S.  
16          Reg. 6,309,386. The La Canada registrations are valid and subsisting.

17          61. At least four of La Canada's federal registrations, including U.S. Reg.  
18          4,471,494, are incontestable pursuant to 15 U.S.C. § 1065, which is conclusive  
19          evidence under 15 U.S.C. § 1115 of the validity of La Canada's marks covered by the  
20          incontestable registrations, including the MD Mark, La Canada's ownership of the  
21          marks, and La Canada's exclusive rights to use the registered marks for the goods and  
22          services that are the subject of the registrations.

23          62. La Canada has priority over MDalgorithms to use MD as the sole or  
24          substantial portion of a mark for health and beauty products.

25          63. La Canada has developed substantial goodwill and consumer recognition  
26          in its MD brand, including the MD Mark and the MD Formative Marks, based on its  
27          long-term and continuous use over almost 17 years.

1           64. U.S. Reg. 6,668,393 for the mark “MDacne” issued to MDalgorithms on  
2 March 8, 2022. MDalgorithms is using “MDacne” in commerce regarding the sale of  
3 health and beauty products in direct competition with La Canada.

4           65. MDalgorithms offers, sells and distributes health and beauty products  
5 under the infringing MD marks to the same or substantially similar class of consumers  
6 through the same or substantially similar channels of trade as La Canada.

7           66. MDalgorithms’ adoption and use of “MDacne” has caused actual  
8 confusion and is likely to cause continued confusion among customers and potential  
9 customers as to the source and quality of goods offered by La Canada.

10          67. MDalgorithms’ actions therefore constitute infringement of La Canada’s  
11 rights in its registered MD Mark and/or MD Formative Marks.

12          68. Unless the “MDacne” registration is cancelled, MDalgorithms will have a  
13 presumptive right to continue to use the mark in commerce, which will result if further  
14 consumer confusion.

15          69. La Canada therefore requests an order that the USPTO cancel  
16 MDalgorithms’ U.S. Reg. 6,668,393 for the mark “MDacne” pursuant to 15 U.S.C. §§  
17 1064 and 1119.

18           **COUNT IV – DECLARATION THAT LA CANADA’S CONDUCT IS**  
19                                   **LAWFUL**

20          70. La Canada hereby restates and incorporates the factual allegations in  
21 Paragraphs 1-69 above as if set forth fully herein.

22          71. There is a real and immediate justiciable controversy between La Canada  
23 and MDalgorithms regarding rights to use and enforce marks consisting of MD as a  
24 sole or substantial component for health and beauty products.

25          72. Actual confusion has occurred as a result of MDalgorithms’ adoption and  
26 use of MD marks in connection with health and beauty products. La Canada reported  
27 this actual confusion to online platforms, including Amazon and Apple, pursuant to the  
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1 processes and procedures provided by those platforms.

2 73. MDalgorithms has expressly accused La Canada of acting illegally in  
3 reporting the actual confusion and expressly threatened to bring suit in which it will  
4 allege various theories of improper business conduct and seek damages and an  
5 injunction.

6 74. La Canada's actions were legitimate acts as an owner of numerous  
7 registrations of MD marks for use in connection with health and beauty products, which  
8 La Canada began offering under the marks years prior to MDalgorithms.

9 75. La Canada is therefore entitled to a declaration pursuant to 28 U.S.C. §  
10 2201 *et seq.* that it has not acted in any unfair or unlawful manner.

11 **COUNT V – FALSE ADVERTISING IN VIOLATION OF FEDERAL LAW**

12 76. La Canada hereby restates and incorporates the factual allegations in  
13 Paragraphs 1-75 above as if set forth fully herein.

14 77. As indicated by MDalgorithms' statements made under oath in its filings  
15 with the U.S. Patent and Trademark Office, MDalgorithms offers its products under its  
16 marks, including MDacne and MDhair, in interstate commerce. Furthermore,  
17 MDalgorithms maintains websites, including mdacne.com and mdhair.co, through  
18 which it offers its products in interstate commerce via the internet.

19 78. In advertising its products offered under the MDacne and MDhair marks,  
20 MDalgorithms makes specific statements of fact about those products, including  
21 statements made on its mdacne.com and mdhair.co websites.

22 79. MDalgorithms claims that its products are "customized" treatments based  
23 on customer input from an app or questionnaire on an MDalgorithms' website. A  
24 "customized" product is then recommended based on the customer input regarding  
25 variables such as age, skin type, acne severity, sensitivity, and prior history. Upon  
26 information and belief, however, the same products are recommended when the  
27 information for the variables is changed. As a result, the same product is recommended  
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1 regardless of the information that is input. The advertising of the product as  
2 “customized” is intended to induce customers to purchase standard formulations that  
3 MDalgorithms sells regardless of the specific skin or hair condition reported by the  
4 customer.

5 80. MDalgorithms claims that the purchase of its products includes “unlimited  
6 dermatologist support.” Upon information and belief, MDalgorithms does not employ  
7 medical doctors who are licensed in the U.S. Moreover, in a separate terms and  
8 conditions statement, MDalgorithms includes the disclaimer that “no professional  
9 advice” is given. The statement of “unlimited dermatologist support” is intentionally  
10 conspicuous to the consumers while the statement that no professional medical advice  
11 is being provided is buried in the website terms and conditions and thus intentionally  
12 inconspicuous. The advertising of purported “unlimited dermatologist support” is  
13 therefore intended to induce customers to purchase MDalgorithms’ products based on  
14 the mistaken belief that the purchase includes a service of the type and quality that is  
15 not being provided.

16 81. MDalgorithms claims that its MDacne products are “FDA approved.”  
17 Upon information and belief, MDalgorithms has received no FDA approval for any of  
18 its products nor has it submitted its products to the FDA with a request for approval.  
19 The advertising of the product as “FDA approved” is intended to induce customers to  
20 purchase the MDacne products based on a reliance on the proven efficacy of the  
21 product.

22 82. MDalgorithms offers the first purchase of its products for free or at a  
23 greatly reduced price. MDalgorithms does not, however, adequately disclose that by  
24 accepting the offer, the customer, upon shipment by MDalgorithms, is being signed up  
25 for repeated shipments (at an increased price) over an indefinite period of time that can  
26 aggregate to hundreds of dollars for a product that cannot be returned. The charge is  
27 automatically deducted from the customer’s credit card account and in a separate terms  
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1 and conditions statement that is not readily evident to consumers, MDalgorithms states  
2 that the product cannot be returned because it is a medicated product. MDalgorithms’  
3 practices have resulted in multiple customer complaints, including those that were  
4 erroneously directed to La Canada. MDalgorithms is aware of the complaints but has  
5 done nothing to address its misleading practices.

6 83. MDalgorithms’ factual statements in its advertising of its products are  
7 false and misleading.

8 84. MDalgorithms’ false and misleading statements of fact have deceived,  
9 and have a tendency to and are likely to continue to deceive, a substantial portion of  
10 reasonable consumers and potential consumers for treatments of issues related to acne,  
11 skin, lashes and hair. Customers on independent review sites have made statements  
12 such as “no hair treatments they will send will help you and they will steal your  
13 money,” “[they] just want to take your money,” “[i]t’s a scam,” “I researched the  
14 company and found out that every single person that speaks good about them is a  
15 person who they paid to do the review to scam people,” and “they don’t actually tailor  
16 it to you.” See Ex. 1, excerpt of [MDhair Reviews | Read Customer Service Reviews of](#)  
17 [mdhair.co \(trustpilot.com\)](#) (last accessed July 28, 2023); Ex. 2, excerpt of [MDacne](#)  
18 [Reviews | Read Customer Service Reviews of www.mdacne.com \(trustpilot.com\)](#) (last  
19 accessed July 28, 2023).

20 85. La Canada has also received complaints from purchasers of  
21 MDalgorithms’ MDhair products who contact La Canada about those products. More  
22 recently, these purchasers have accused La Canada of defrauding them through  
23 unauthorized charges to their credit cards. The purchasers are mistakenly impugning  
24 La Canada with MDalgorithms’ false and misleading acts, including those mentioned  
25 on the review sites.

26 86. As shown by the review site statements, MDalgorithms’ false statements  
27 of fact about its products have influenced and are likely to influence the purchasing  
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1 decision of customers. The false statements are therefore material.

2 87. MDalgorithms caused the false statements of fact identified above to enter  
3 interstate commerce by, *inter alia*, including them on its mdacne.com and mdhair.co  
4 websites.

5 88. La Canada directly competes with MDalgorithms regarding the sale of  
6 products for treatment of skin, hair and lashes. As a direct and proximate cause of  
7 MDalgorithms' false and misleading statements of fact in its advertising, La Canada  
8 has been harmed and is likely to be continued to be harmed as a result of the diversion  
9 of sales and/or the lessening of the goodwill which La Canada's products sold under  
10 its MD-Formative marks enjoyed with the consuming public.

11 89. MDalgorithms' above-described actions and conduct therefore constitute  
12 false advertising under 15 U.S.C. § 1125.

13 90. La Canada is therefore entitled to an award of damages as well as fees and  
14 costs to the fullest extent allowed under federal law, and entry of an order enjoining  
15 further acts of false advertising by MDalgorithms.

## 16 **COUNT VI – FALSE ADVERTISING IN VIOLATION OF CALIFORNIA**

### 17 **STATE LAW**

18 91. La Canada hereby restates and incorporates the factual allegations in  
19 Paragraphs 1-90 above as if set forth fully herein.

20 92. As indicated by MDalgorithms' statements made under oath in its filings  
21 with the U.S. Patent and Trademark Office, MDalgorithms offers its products under its  
22 marks, including MDacne and MDhair, in interstate commerce, including throughout  
23 California. Furthermore, MDalgorithms maintains websites, including mdacne.com  
24 and mdhair.co, through which it offers its products in interstate commerce, including  
25 throughout California, via the internet.

26 93. In advertising its products offered under the MDacne and MDhair marks,  
27 MDalgorithms makes specific statements of fact about those products, including  
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1 statements made on its mdacne.com and mdhair.co websites.

2 94. MDalgorithms claims that its products are “customized” treatments based  
3 on customer input from an app or questionnaire on an MDalgorithms’ website. A  
4 “customized” product is then recommended based on the customer input regarding  
5 variables such as age, skin type, acne severity, sensitivity, and prior history. Upon  
6 information and belief, however, the same products are recommended when the  
7 information for the variables is changed. As a result, the same product is recommended  
8 regardless of the information that is input. The advertising of the product as  
9 “customized” is intended to induce customers to purchase standard formulations that  
10 MDalgorithms sells regardless of the specific skin or hair condition reported by the  
11 customer.

12 95. MDalgorithms claims that the purchase of its products includes “unlimited  
13 dermatologist support.” Upon information and belief, MDalgorithms does not employ  
14 medical doctors who are licensed in the U.S. Moreover, in a separate terms and  
15 conditions statement, MDalgorithms includes the disclaimer that “no professional  
16 advice” is given. The statement of “unlimited dermatologist support” is intentionally  
17 conspicuous to the consumers while the statement that no professional medical advice  
18 is being provided is buried in the website terms and conditions and thus intentionally  
19 inconspicuous. The advertising of purported “unlimited dermatologist support” is  
20 therefore intended to induce customers to purchase MDalgorithms’ products based on  
21 the mistaken belief that the purchase includes a service of the type and quality that is  
22 not being provided.

23 96. MDalgorithms claims that its MDacne products are “FDA approved.”  
24 Upon information and belief, MDalgorithms has received no FDA approval for any of  
25 its products nor has it submitted its products to the FDA with a request for approval.  
26 The advertising of the product as “FDA approved” is intended to induce customers to  
27 purchase the MDacne products based on a reliance on the proven efficacy of the  
28

1 product.

2 97. MDalgorithms offers the first purchase of its products for free or at a  
3 greatly reduced price. MDalgorithms does not, however, adequately disclose that by  
4 accepting the offer, the customer, upon shipment by MDalgorithms, is being signed up  
5 for repeated shipments (at an increased price) over an indefinite period of time that can  
6 aggregate to hundreds of dollars for a product that cannot be returned. The charge is  
7 automatically deducted from the customer's credit card account and in a separate terms  
8 and conditions statement that is not readily evident to consumers, MDalgorithms states  
9 that the product cannot be returned because it is a medicated product. MDalgorithms'  
10 practices have resulted in multiple customer complaints, including those that were  
11 erroneously directed to La Canada. MDalgorithms is aware of the complaints but has  
12 done nothing to address its misleading practices.

13 98. MDalgorithms' factual statements in its advertising of its products are  
14 false and misleading.

15 99. MDalgorithms' false and misleading statements of fact have deceived,  
16 and have a tendency to and are likely to continue to deceive, a substantial portion of  
17 reasonable consumers and potential consumers for treatments of issues related to acne,  
18 skin, lashes and hair. Customers on independent review sites have made statements  
19 such as "no hair treatments they will send will help you and they will steal your  
20 money," "[they] just want to take your money," "[i]t's a scam," "I researched the  
21 company and found out that every single person that speaks good about them is a  
22 person who they paid to do the review to scam people," and "they don't actually tailor  
23 it to you." See Ex. 1, excerpt of [MDhair Reviews | Read Customer Service Reviews of](#)  
24 [mdhair.co \(trustpilot.com\)](#) (last accessed July 28, 2023); Ex. 2, excerpt of [MDacne](#)  
25 [Reviews | Read Customer Service Reviews of www.mdacne.com \(trustpilot.com\)](#) (last  
26 accessed July 28, 2023).

27 100. La Canada has also received complaints from purchasers of  
28

1 MDalgorithms' MDhair products who contact La Canada about those products. More  
2 recently, these purchasers have accused La Canada of defrauding them through  
3 unauthorized charges to their credit cards. The purchasers are mistakenly impugning  
4 La Canada with MDalgorithms' false and misleading acts, including those mentioned  
5 on the review sites.

6 101. As shown by the review site statements, MDalgorithms' false statements  
7 of fact about its products have influenced and are likely to influence the purchasing  
8 decision of customers. The false statements are therefore material.

9 102. MDalgorithms caused the false statements of fact identified above to enter  
10 interstate commerce, including throughout California, by, *inter alia*, including them on  
11 its mdacne.com and mdhair.co websites.

12 103. La Canada directly competes with MDalgorithms regarding the sale of  
13 products for treatment of skin, hair and lashes. As a direct and proximate cause of  
14 MDalgorithms' false and misleading statements of fact in its advertising, La Canada  
15 has been harmed and is likely to be continued to be harmed as a result of the diversion  
16 of sales and/or the lessening of the goodwill which La Canada's products sold under  
17 its MD-Formative marks enjoyed with the consuming public.

18 104. In addition, MDalgorithms' above-described acts regarding the automatic  
19 renewal of subscriptions to its products violate California Business and Professional  
20 Code § 17602 because, *inter alia*, MDalgorithms does not adequately disclose that the  
21 consumer is consenting to automatic charging of the consumer's credit card, fails to  
22 provide adequate information about or opportunity for cancellation of the subscription,  
23 and fails to provide adequate contact information (as shown by MDalgorithms'  
24 customers contacting La Canada regarding MDalgorithms' products).

25 105. MDalgorithms' actions therefore constitute false advertising in violation  
26 of California Business & Professions Code § 17200, *et seq.* and § 17500, *et seq.*

27 106. MDalgorithms' actions have been willful and in disregard of the harm it  
28

1 is causing and has caused to La Canada and the consuming public.

2 107. La Canada is therefore entitled to restitutionary relief and entry of an order  
3 enjoining further acts of false advertising by MDalgorithms as well as any other relief  
4 available under California law.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff La Canada Ventures, Inc. respectfully requests that the  
7 Court enter judgment in its favor and against defendant MDalgorithms, Inc. as follows:

- 8 A. Adjudging that MDalgorithms, Inc.’s use of “MD” as a portion of a mark for  
9 health and beauty products infringes La Canada Ventures, Inc.’s rights in its  
10 family of MD Formative Marks, including the registered MD Mark;
- 11 B. Preliminarily and permanently enjoining MDalgorithms, Inc. from using  
12 “MD” or any colorable imitation thereof in a manner that is confusingly  
13 similar to La Canada Ventures, Inc.’s MD marks;
- 14 C. Adjudging that MDalgorithms, Inc.’s false and misleading statement of fact  
15 in its advertising of the MDacne and MDhair products constitutes false  
16 advertising;
- 17 D. Preliminarily and permanently enjoining MDalgorithms, Inc. from making  
18 false and misleading statements of fact about the nature and quality of its  
19 MDacne and MDhair products in the advertising of those products.
- 20 E. Preliminarily and permanently enjoining MDalgorithms, Inc. from further  
21 violations of the laws governing the automatic renewal of shipments of or  
22 subscription to MDalgorithms’ products and services, including Cal. Bus. &  
23 Prof. Code § 17602.
- 24 F. Awarding monetary damages in an amount to be proven at trial;
- 25 G. Adjudging and declaring MDalgorithms, Inc.’s infringement and/or false  
26 advertising to be willful;
- 27 H. Awarding restitutionary relief for MDalgorithms, Inc.’s violations under  
28

1 California law;

2 I. Enhancing the monetary damages award up to three times pursuant to 15  
3 U.S.C. § 1117(a)-(b);

4 J. Awarding La Canada Ventures, Inc. its attorney's fees and costs;

5 K. Entering an order that MDalgorithms, Inc.'s U.S. Reg. 6,668,393 is to be  
6 cancelled by the U.S. Patent and Trademark Office;

7 L. Adjudging and declaring that La Canada Ventures, Inc.'s actions have been  
8 lawful and have not violated any right of MDalgorithms, Inc.; and

9 M. Awarding such other and further relief as the Court deems proper.

10  
11 **JURY TRIAL DEMANDED**

12 Plaintiff La Canada Ventures, Inc. hereby requests a trial by jury for all issues  
13 so triable.

14  
15 DATED: August 23, 2023

Respectfully Submitted,

16  
17 By: /s/ Cecil E. Key

18 Andrew S. Dallmann  
MCCARTNEY DALLMANN LLP

19 Cecil E. Key  
20 KEY IP LAW GROUP, PLLC

21 Attorneys for Plaintiff  
22 LA CANADA VENTURES, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on August 23, 2023, I electronically transmitted the foregoing document using the CM/ECF system for filing, which will transmit the document electronically to all registered participants as identified on the Notice of Electronic Filing, and paper copies have been served on those indicated as non-registered participants. a true and correct copy of the foregoing document was served via email to the counsel of record for Defendant at the following addresses:

/s/ Cecil E. Key  
Cecil E. Key